



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/537,663

06/12/2006

Sylvain Dal

0512-1280

6617

466

7590

06/25/2009

YOUNG & THOMPSON

209 Madison Street

Suite 500

ALEXANDRIA, VA 22314

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/537,663</p>	<p>Applicant(s) DAL ET AL.</p>	
	<p>Examiner Brent T. O'Hern</p>	<p>Art Unit 1794</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 6/17/2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 7-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/BTO/
Brent T. O'Hern
Examiner, Art Unit: 1794

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because:

The application is not in condition for allowance as the cited prior art teaches the claimed invention.

In response to Applicant's arguments (See p. 5 of Applicant's Paper filed 6/17/2009.) that FR469 does not teach a pull corner formed by a triangular projection that is distinct from the two tear strips, it is firstly noted that the claims do not state the strips and sheet are distinct and as illustrated in at least FIGs 2-3 of FR469 the tear strips and the sheet both have triangular shapes when pulled.

In response to Applicant's arguments (See p. 6 of Applicant's Paper filed 6/17/2009.) that FR025 does not teach U-shaped pull strips in the rectangular projection, it is noted that the Examiner does not disagree and the Examiner does not assert such. FR025 is cited for teaching that these types of barrier containers having multiple pieces and usable for cheese packaging.

In response to Applicant's arguments (See p. 7, para. 2 of Applicant's Paper filed 6/17/2009.) that FR469 and FR025 do not teach a triangular projection from one side of the first sheet but rather the tear strips are separated from the first sheet, it is noted as discussed above that FR469 teaches triangular projections as illustrated in the Figures. Furthermore, when the sheets are torn the sheets also form a triangular projection and the claims do not specify when the package has the particular shapes.

In response to Applicant's arguments (See p. 7, para. 3 of Applicant's Paper filed 6/17/2009.) that FR469 and FR025 do not teach the projection being distinct from the pull corner, it is noted that the claims do not specify the materials having a different source. Furthermore, when the sheets are torn the sheets also have a similar shape as the trips as illustrated in the figures.

In response to Applicant's arguments (See p. 7, para. 4 of Applicant's Paper filed 6/17/2009.) that FR469 and FR025 do not teach the first and second sheets made of polypropylene, it is noted that FR469 and FR025 are not cited for teaching these materials. Layne ('768) is cited for making cheese packages out of polypropylene.

In response to Applicant's arguments (See p. 8, para. 1 of Applicant's Paper filed 6/17/2009.) that FR469 and FR025 are not compatible with heat shrinkable films as taught by Layne ('768) because it would be impossible to open these packages, it is noted that Layne ('768) is cited for teaching polypropylene packaging materials for cheese packages and not heat shrinkable films.

In response to Applicant's arguments (See p. 8, para. 2 of Applicant's Paper filed 6/17/2009.) that the first and second layers of claims 7 and 13 are not made of layers but are only made of polypropylene, it is noted that the claims expressly claim a first and second sheet and do not negatively exclude the presence of layers. It appears that Applicant is arguing about teachings in Applicant's Specification and not about limitations in the claims.

/BTO/
Brent T. O'Hern
Examiner, Art Unit: 1794